



City of Cambridge

MASSACHUSETTS

BOARD OF ZONING APPEAL

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2019 APR 26 AM 10:51
OFFICE OF THE CITY CLERK
CAMBRIDGE, MASSACHUSETTS

CASE NO: BZA-017068-2019

LOCATION: 1407 Cambridge St. (Vellucci Plaza) Open Space
Cambridge, MA

PETITIONER: John Pitkin

PETITION: **Appeal:** Appeal the letter from Commissioner of Inspectional Services dated January 28, 2019, regarding Zoning Enforcement Request for Vellucci Plaza.

VIOLATIONS: Art. 10.000, Sec. 10.20 (Appeal).

DATE OF PUBLIC NOTICE: February 14 & 21, 2019

DATE OF PUBLIC HEARING: February 28, 2019 & April 11, 2019

MEMBERS OF THE BOARD:

CONSTANTINE ALEXANDER – CHAIR
BRENDAN SULLIVAN – VICE-CHAIR
JANET O. GREEN
ANDREA A. HICKEY

✓
✓
✓

ASSOCIATE MEMBERS:

SLATER W. ANDERSON
ALISON HAMMER
JIM MONTEVERDE
LAURA WERNICK

✓
✓

Members of the Board of Zoning Appeal heard testimony and viewed materials submitted regarding the above request for relief from the requirements of the Cambridge Zoning Ordinance. The Board is familiar with the location of the petitioner's property, the layout and other characteristics as well as the surrounding district.

Case No. BZA-017068-2019
Location: 1407 Cambridge Street
Petitioner: John Pitkin

On February 28, 2019, Petitioner John Pitkin appeared before the Board of Zoning Appeal with his attorney Olympia Bowker to appeal the letter from the Commissioner of the Inspectional Services Department dated January 28, 2019, regarding the Zoning Enforcement Request for Vellucci Plaza. At the February 28, 2019 hearing the parties agreed to continue the hearing until April 11, 2019. At the April 11, 2019 hearing, the Petitioner and Attorney Bowker again appeared before the Board. The Petitioner submitted application materials in support of his appeal.

Attorney Bowker requested that the Board of Zoning Appeal reverse the determination of the Commissioner of the Inspectional Services Department that the Vellucci Plaza project was not subject to the Cambridge Zoning Ordinance ("Ordinance"), did not require Planning Board review under Article 4, Section 4.25 of the Ordinance, and was not properly classified as a Municipal Services Facility. She stated that Vellucci Plaza was zoned as an Open Space district and so Planning Board review of the City's project was required under Article 4, Section 4.25 of the Ordinance, and the project constitutes a Municipal Services Facility, for which a special permit was required.

Members of the public wrote and/or spoke in support and in opposition to the appeal.

After discussion, the Chair, based on the extensive briefs, documents submitted, arguments, and oral presentations, read the following statement:

"Most of the discussion that has taken place at our hearing has resolved around the wisdom, or lack thereof, of the proposed public way relocation at Inman Square and the process that has and has not been followed in arriving at this relocation decision. But the issues this Board has to resolve are narrow and legalistic, does Section 4.25 of our Zoning Ordinance require a hearing before the Planning Board with regard to the change to Vellucci Park resulting from the proposed road relocation and does Section 4.33.F of our Zoning Ordinance require a Special Permit from our Board for this project. The Commissioner of the Inspectional Services Department says no, and I agree with him.

Section 4.25 relied upon by the petitioners deals with changes to open spaces in open space districts designated by our Zoning Ordinance but not all changes. Let me quote from the memorandum prepared by the petitioner's very able counsel that accompanied the petitioner's petition. Quote, "The Ordinance does not explicitly mention roadways as prohibited

in open space districts, but the prohibition of driveways in public open space districts by extension implies that a roadway is not an open space development; therefore, it is a non-open space development."

Note the words, quote, "by extension implies," hardly a compelling and strong statement, and the application of this implied extension would require us to equate a driveway to a public roadway. Very clearly, a driveway is not the same as a public roadway. So I find it difficult to find that Section 4.25 applies to the situation before us.

Let's continue the analysis. The City Council is responsible for the management of the City of Cambridge, and one of its most important responsibilities is the layout, relocation, and alteration of public ways. This is not an easy task, and often the discharge of this responsibility is met with controversy and challenges from those directly and immediately affected by the proposed action, as is the case with the proposed public roadway relocation at Inman Square.

The petitioners would have us find that the City Council through Section 4.25 of our Zoning Ordinance intended that its determination to be subject to, really limited by a Zoning Ordinance it adopted and that this Ordinance implies, not explicitly states, that this is so by reference to driveways.

In short, it is the petitioner's position that the City Council intended that its responsibilities regarding roadways be subject to a Planning Board hearing by an Ordinance it enacted dealing with land use, primarily private land use throughout the City.

It seems to me that this position turns the process on its head, requiring that the discharge of a primary responsibility of the City Council be first subject to a hearing, hearing by a Board appointed by the City Council. This could be so if our Zoning Ordinance is abundantly specific that this is so, but it is not, as I have pointed out.

The petitioner's argument is based on inference to language that is not directly on point to the issue before us. I believe our Ordinance must be quite specific before I would require the City Council to hold a Planning Board hearing with regard to do what it proposes to do involving Vellucci Park. I believe that a fair reading of our Zoning Ordinance does not require that and permits the City Council to proceed without Planning Board involvement.

And let me point out, as the petitioner's counsel acknowledges, that the City Council did proceed with the input of others. The proposed public way relocation has received approval for removal of public shade trees, a certificate of appropriateness by the Mid Cambridge Conservation District Commission, and approval for a whole new petition by the City Council to the state legislature for reuse of land protected by Article 97 of the state constitution.

It is true that the City Council did not seek a review by the Planning Board possibly because it was advised by the City Solicitor that such a review was not required. This does not mean that the City Council did not hold public hearings regarding the project. In fact, there is testimony at our prior hearing that the City did hold at least one public hearing concerning the project, a hearing that petitioners apparently found unsatisfactory.

Whether the City Council should have requested a hearing before the Planning Board was a decision it made and had the right to make. It chose not to. The important point is that the City Council did not proceed without holding hearings by others before making its decision.

The petitioners also assert that the proposed public roadway relocation in Inman Square constitutes a Municipal Services Facility as defined by our Zoning Ordinance and, therefore, requires a Special Permit from our board pursuant to Section 4.33.F of our Zoning Ordinance, which the City has not obtained or even sought.

But I believe the Commissioner's decision on this question is entirely correct. Let me quote from his letter. Quote, 'The laying out, relocation, or use of a public way does not fall under the definition of municipal service facility, which is defined as the use of land' -- let me repeat -- 'the use of land or structures by the City of Cambridge or other municipality for maintenance operations, public utilities, Public Works, and similar functions. A municipal service facility is the use of land or structures by the City or other municipality whereas based on the plain meaning of public way the proposed street location is the use of land by the public for travel. Any maintenance operations, public utilities, or Public Work projects within a public way or for the purposes of maintaining the public way or are incidental or accessory to the use of the public way for public travel.

Let me be clear that my views and maybe the views of my fellow Board members and, for all I know, the private view of the Commissioner are not an endorsement of any proposed street layout at Inman Square. Rather, they deal with the process that must be followed with regard to street layouts.

In short, the petitioners are speaking to the wrong audience. It is the City Council to which they needed to direct their concerns and objections. And if these concerns and objections were not addressed to their satisfaction, their recourse was, and is, to seek to throw the rascals out. This is the process that is required, not an appeal to our Zoning Board. And most strenuously, let me be more than clear that my reference to rascals is entirely figurative and should in no way be taken literally."

After further discussion, the Chair moved, based on the Petitioner's submissions, testimony and evidence presented to the Board that the Board grant the appeal of the letter from the Commissioner of the Inspectional Services Department dated January 28, 2019, regarding the Zoning Enforcement Request for Vellucci Plaza and overrule the decision of the Commissioner.

The five-member Board voted unanimously in opposition to granting the appeal (Alexander, Sullivan, Hickey, Monteverde, and Wernick). Therefore, the appeal is denied.

The Board adopted the Chair's statement above and the discussions of its members concurring with the Chair's conclusions as the reasons for denying the appeal.

The Board of Zoning Appeal is empowered to waive local zoning regulations only. This decision therefore does not relieve the petitioner in any way from the duty to comply with local ordinances and regulations of the other local agencies, including, but not limited to the Historical Commission, License Commission and/or compliance with requirements pursuant to the Building Code and other applicable codes.



Constantine Alexander, Chair

Attest: A true and correct copy of decision filed with the offices of the City Clerk and Planning Board on 7/26/19 by Maria Packer, Clerk.

Twenty days have elapsed since the filing of this decision.

No appeal has been filed _____.

Appeal has been filed and dismissed or denied.

Date: _____ City Clerk.